

DATE: January 25, 2005

TO: Gerald M. O'Brien, Chair
Howard D. Poulson, Vice-Chair
Stephen D. Willett (Air, Waste and Water Management/Enforcement Committee)

FROM: Scott Hassett

SUBJECT: Background Memo for Final Adoption of Modifications to NR 500 Series Related to Recycling

1. Why The Rule Modifications Are Being Proposed

The proposed revisions to the NR 500 series related to recycling will eliminate obsolete language and update the code to reflect changes that have occurred in the recycling field since the code was adopted over 10 years ago. The proposed revisions are the result of a six-month stakeholder process; the Department convened five regional listening sessions and worked closely with the NR 544 Rule Revisions Workgroup to secure stakeholder input in the process.

2. Summary of the Proposed Rule Revisions

The majority of the proposed rule revisions address NR 544, Effective Recycling Programs, commonly referred to as the Recycling Rule. Sections of NR 500 and 502, related to recycling facilities and services, are also addressed. NR 545, which addresses Out-of-State Units with an effective recycling program, is deleted entirely.

a. Proposed revisions to NR 544 Effective Recycling Programs

Technical edits: All references to recycling requirements for out-of-state units and volume based fee systems are eliminated. Also eliminated are references to obsolete sections of statutes and code and to dates that are long passed.

Code updates: Other revisions are proposed to clarify the original intent and scope of recycling requirements by state law and under local ordinance, to address changes to recycling collection and processing systems, and to ensure that materials recovery facilities are operated and maintained in a manner so as to protect the environment and human health.

b. Proposed revisions to NR 500, General Solid Waste Management Requirements

Revise definitions to be consistent with statutory definition or to add clarification.

c. Proposed revisions to NR 502, Solid Waste Storage, Transportation, Transfer, Incineration, Air Curtain Destructors, Processing, Wood Burning, Composting and Municipal Solid Waste Combustors.

Add language to ensure that transfer and solid waste processing facilities are maintained and operated in a manner so as to protect the environment and human health, and eliminate exemptions for handling of waste tires. Add language to ensure that recycling services inform their clients of recycling requirements under state and local law.

3. How This Proposal Affects Existing Policy

The proposed revisions are not intended to change existing policy. The intent is to clarify and reaffirm the original intent and scope of rules related to recycling and to ensure that recycling facilities are operated and maintained in a manner so as to protect the environment and human health.

4. Hearing Synopsis

The Board, at its September 2004 meeting, authorized the Department to hold public hearings to solicit input in the proposed rule revisions. The Department held public hearings on November 15, 2004. Five people attended the hearings and eight sets of public comments were received. The majority of comments received was in support of the proposed rules changes, or requested clarification of rule language for consistency with other portions of the rules. The Department received one set of comments in opposition to a proposed provision to require haulers of solid waste and recyclable materials to notify their clients of recycling requirements under state law and local ordinances. The Department's response to public comment are detailed in Attachment 1, Summary of Public Comments to Proposed Rule Revisions with DNR Responses.

5. Changes Made to the Plain Language Analysis or the Fiscal Analyses

The Department clarified language in the Plain Language Analysis of the Proposed Rule Revisions related to NR 545, which addresses Out-of-State Units with an effective recycling program. The change clarifies the determination of the federal courts, in 1999, that Wisconsin's scheme of regulating the inflow of out-of-state recyclable waste was in violation of the Interstate Commerce Clause of the U.S. Constitution.

No changes were made to the fiscal analyses.

6. Information on Environmental Analysis

The Department has determined that no information on environmental analyses is needed for the proposed revisions to the recycling rules. This determination is consistent with the determination made when the proposed revisions were first presented to the Board in September 2004 for approval to hold public hearings.

7. Regulatory Flexibility Analysis

Because no new regulations are being introduced, the Department does not anticipate any increased or new impact on small business currently affected by state and local recycling requirements.

The revisions to the recycling rules will eliminate obsolete language and clarify the original intent and scope of rules related to recycling and recycling services, without changing the basic structure or operation of the current program. The current program structure embraces concepts of regulatory flexibility, such as managing the performance of the more than 100 materials recovery facilities through an established and successful self-certification process and granting responsible units continued approval of their effective recycling programs upon review of a concise annual report. The proposed rule language expands the scope of flexibility by facilitating the process by which a responsible unit can switch to a single stream collection system.

